

§ 904.300

decision to remand the initial decision to the Judge is not final agency action.

(l) An initial decision shall not be subject to judicial review unless:

(1) The party seeking judicial review has exhausted its opportunity for administrative review by filing a petition for review with the Administrator in compliance with this section, and

(2) The Administrator has issued a final ruling on the petition that constitutes final agency action under paragraph (k) of this section or the Judge's initial decision has become the final agency decision under paragraph (h) of this section.

(m) For purposes of any subsequent judicial review of the agency decision, any issues that are not identified in any petition for review, in any answer in support or opposition, by the Administrator, or in any modifications to the initial decision are waived.

(n) If an action is filed for judicial review of a final agency decision, and the decision is vacated or remanded by a court, the Administrator shall issue an order addressing further administrative proceedings in the matter. Such order may include a remand to the Chief Administrative Law Judge for further proceedings consistent with the judicial decision, or further briefing before the Administrator on any issues the Administrator deems appropriate.

Subpart D—Permit Sanctions and Denials

GENERAL

§ 904.300 Scope and applicability.

(a) This subpart sets forth procedures governing the suspension, revocation, modification, and denial of permits for reasons relating to enforcement of the statutes cited in § 904.1(c), except for the statutes listed in paragraph (b) of this section. Nothing in this subpart precludes sanction or denial of a permit for reasons not relating to enforcement. As appropriate, and unless otherwise specified in this subpart, the provisions of subparts A, B, and C of this part apply to this subpart.

(b) Regulations governing sanctions and denials of permits issued under the Deep Seabed Hard Mineral Resources

15 CFR Ch. IX (1–1–07 Edition)

Act (30 U.S.C. 1401 *et seq.*) appear at 15 CFR part 970.

§ 904.301 Bases for permit sanctions or denials.

(a) Unless otherwise specified in a settlement agreement, or otherwise provided in this subpart, NOAA may take action under this subpart with respect to any permit issued under the statutes cited in § 904.1(c). The bases for an action to sanction or deny a permit include but are not limited to the following:

(1) The commission of any violation prohibited by any statute administered by NOAA, including violation of any regulation promulgated or permit condition or restriction prescribed thereunder, by the permit holder or with the use of a permitted vessel;

(2) The failure to pay a civil penalty assessed under subparts B and C of this part;

(3) The failure to pay a criminal fine imposed or to satisfy any other liability incurred in a judicial proceeding under any of the statutes administered by NOAA; or

(4) The failure to comply with any term of a settlement agreement.

(b) A permit sanction may be imposed, or a permit denied, under this subpart with respect to the particular permit pertaining to the violation or nonpayment, and may also be applied to any NOAA permit held or sought by the permit holder or successor in interest to the permit, including permits for other activities or for other vessels. Examples of the application of this policy are the following:

(1) NOAA suspends Vessel A's fishing permit for nonpayment of a civil penalty pertaining to Vessel A. The owner of Vessel A buys Vessel B and applies for a permit for Vessel B to participate in the same or a different fishery. NOAA may withhold that permit until the sanction against Vessel A is lifted.

(2) NOAA revokes a Marine Mammal Protection Act permit for violation of its conditions. The permit holder subsequently applies for a permit under the Endangered Species Act. NOAA may deny the ESA application.

(3) Captain X, an officer in Country Y's fishing fleet, is found guilty of assaulting an enforcement officer. NOAA